

TO: Persons Interested in the Proposed Trial Court Rule XIV Uniform Rules on Access to Court Records

FR: Trial Court Committee on Public Access to Court Records

DA: March 30, 2016

RE: Proposed Public Access Rules

In response to inquiries requesting a comparison between the current means of access to a court record and how such access would change under the proposed rules, the committee has prepared the following overview.

1A. Current remote access to publicly available civil and criminal cases:

Public Internet www.masscourts.org

- Boston Municipal Court - Civil; Small Claims; Summary Process; Supplementary Process.
- District Court - Civil; Small Claims; Summary Process; Supplementary Process.
- Housing Court - Civil; Small Claims; Summary Process; Supplementary Process.
- Land Court - 8 Civil Case Types (Miscellaneous; Other Court; Permit Session; Registration; Service members; Severed; Subsequent; Tax Lien).
- Probate and Family Court - Estates and Administration.
- Superior Court - 11 Civil Case Types (Actions Involving State/Municipality; Administrative Civil Actions; Business Litigation; Civil Actions with Incarcerated Party; Contract/Business Cases; Equitable Remedies; Miscellaneous Civil Actions; Real Property; Sexually Dangerous Person-Exam & Discharge; Sexually Dangerous Person-Determination; Torts).

Public www.Mass.Gov website.

- MassCourts Reports: Land Court - Service Members; Tax Lien; Miscellaneous.
- Supreme Judicial Court - Public dockets, civil & criminal; Briefs (no appendix) for argued cases.
- Appeals Court - Public dockets, civil & criminal; Briefs (no appendix) for argued cases.

Attorneys Internet Portal www.masscourts.org (Registration via Board of Bar Overseers Number and business email address required)

- Housing Court - Civil; Small Claims; Summary Process; Supplementary Process.
- Land Court - 8 Civil Case Types (Miscellaneous; Other Court; Permit Session; Registration; Service members; Severed; Subsequent; Tax Lien).

- Probate & Family Court - 14 Civil Case Types (Domestic Relations Custody, Support, and Parenting Time; Domestic Relations; Domestic Relations/Other; Equity-Partition; Equity Complaint; Equity Petition; Estates and Administration; Guardianship Managed; Joint Petition; Paternity Managed; Paternity in Equity; Probate Abuse/Conservator Managed; Probate Other; Protection from Abuse Managed).
- Superior Court -
 - 11 Civil Case Types (Actions Involving State/Municipality; Administrative Civil Actions; Business Litigation; Civil Actions with Incarcerated Party; Contract/Business Cases; Equitable Remedies; Miscellaneous Civil Actions; Real Property; Sexually Dangerous Person-Exam & Discharge; Sexually Dangerous Person-Determination; Torts).
 - 4 Criminal Case Types (Bail Petition; Criminal Complaint; Indictment; Probation Transfer).
- Imaging in Superior Court cases: Attorneys may view images of 12 docket entries: (1) Endorsement on Dispositive Motion; (2) Endorsement on Equity; (3) Finding and Order on Equity; (4) Findings of Fact and Rulings of Law; (5) Declaratory Judgment G.L. c. 231A; (6) Judgment and Order; (7) Memorandum of Lis Pendens Issued; (8) Memorandum and Order; (9) Writ of Attachment Issued; (10) Order; (11) Preliminary Injunction Issued; (12) Temporary Restraining Order Issued.

1B. What remote access would be provided under the proposed rules.

- **Rule 5(a)(1), Remote Accessibility to Information in Electronic Form Through the Public Portal, Civil Cases.** All civil case types not otherwise restricted or exempted by statute, rule, court order, standing order, or determination of the Chief Justice of the Trial Court shall be made available.
- **Rule 5(a)(1)(iii), Exemption of certain civil case types.** "Abuse prevention and harassment orders and proceedings, and sexually dangerous person proceedings, shall not be available by remote access. Each Department of the Trial Court may request permission from the Chief Justice of the Trial Court to exempt certain additional civil case types or categories of information from remote access. A list of the approved exemptions shall be available on the Trial Court's website."
 - E.g., Domestic relations cases will be exempt, at least initially, due to privacy and child-related reasons.
- **Rule 5(a)(2), Remote Accessibility to Information in Electronic Form Through the Public Portal, Criminal Cases, Notes.** "All criminal case types not exempted by statute, rule, court order, standing order, or determination of the Chief Justice of the Trial Court shall be made available on the Internet Portal. However, as a matter of policy, the committee has determined that criminal case searches will be limited to case number.

Therefore, search by defendant name shall not be permitted on the Internet Portal for criminal cases."

- Search by docket number.
 - Results include defendant's full name, attorney information, docket number, calendar information.
- **Rule 5(b) Attorney Portal, Remote Accessibility to Information in Electronic Form through the Attorney Portal.** "Attorneys who are licensed to practice in Massachusetts and have registered with the Massachusetts Trial Court shall have access to a portal providing remote access to all cases in which they have entered an appearance, and a calendar of scheduled events in such cases. The portable document format (PDF) version of certain publicly available court records, if so maintained by the court, may be made available on the Attorney Portal. Each appropriate Department of the Trial Court may request permission from the Chief Justice of the Trial Court to exempt certain criminal case types or categories of information from remote access. (emphasis added)"
 - Current attorney portal access would be reduced to cases in which the attorney has entered an appearance.
- **Rule 5, Remote Access to Electronic Court Records.** See Notes, Rule 5(a):

"All publicly available docket information in civil and criminal proceedings, except those exempted pursuant to Rule 5(a)(1)(iii) and Rule 5(a)(2)(iii), shall be made available electronically to the extent that the public shall be able to search and view the information designated in this rule. At this time, this rule does not encompass remote access to audio, audiovisual, or electronic images, including portable document format ("PDF") to the general public. The Chief Justice of the Trial Court has authority to expand remote access to include audio, audiovisual, or electronic images when technology and policy allow."
- **Rule 5(d), Availability of Additional Records.** "The Chief Justice of the Trial Court may determine that additional electronic court records or information may be made remotely accessible to the public."
 - Could include PDF of Court-issued documents, such as now available on Attorney Portal for Superior Court.
 - Could include PDF of some filings post-SJC redaction rule.
 - Could include audio, audiovisual, or electronic images.
- **See proposed SJC Rule 1:24, Protection of Personal Identifying Information in Publicly Accessible Court Documents** (deadline for comments was Oct.14, 2015). Proposed rule would require filer to redact personal identifying information (e.g., social

security numbers, financial account numbers and passwords, etc.) from most filings before submission to court to reduce identity theft.

- **Calendar functions.** Committee recommending public website include calendar of scheduled case events by court departments and divisions.

2A. What access to court records is available in a clerk's office public access terminal/kiosk now.

- Locations - All clerk's offices have a public terminal/kiosk.
- Trial Court, Civil - May search by department, division, party name, docket number, case type, dates. May search from one location for all open locations.
- Boston Municipal Court & District Courts - 25 civil case types.¹
- Housing Court - 6 civil case types (Civil; Small Claims; Summary Process; Supplementary Process; Ticket Hearings; Utility Warrants).
- Land Court - 8 civil case types (Miscellaneous; Other Court; Permit Session; Registration; Service members; Severed; Subsequent; Tax Lien).
- Probate and Family Court - 15 civil case types:
 - Change of Name Managed; Domestic Relations Custody, Support, and Parenting Time; Domestic Relations; Domestic Relations/Other; Equity-Partition; Equity Complaint; Equity Petition; Estates and Administration; Guardianship Managed; Joint Petition; Paternity Managed; Paternity in Equity; Probate Abuse/Conservator Managed; Probate Other; Protection from Abuse Managed.
- Superior Court Civil - 11 case types:
 - Actions Involving State/Municipality; Administrative Civil Actions; Business Litigation; Civil Actions with Incarcerated Party; Contract/Business Cases; Equitable Remedies; Miscellaneous Civil Actions; Real Property; Sexually Dangerous Person-Exam & Discharge; Sexually Dangerous Person-Determination; Torts.
- Trial Court Criminal - Only Superior Court. 3 case types - Bail Petition, Criminal Complaint, Indictment. May search by defendant name, department, division.
- Supreme Judicial Court - All public cases, civil and criminal.
- Appeals Court - All public cases, civil and criminal.

¹ Abuse Prevention, Admin. Appeals, Admin. Search Warrant, Appeal, Civil, Civil Bicycle Infraction (BCI), Civil Bicycle Infraction (BMV), Civil Motor Vehicle Infraction, Dog Control Civil Infraction, Environmental Civil Infraction, Inquest, Legacy Motor Vehicle Infraction, MBTA Smoking Civil Infraction, Marijuana/THC Possession Infraction, Marriage Waiver, Motorboat Civil Infraction, Municipal Ordinance, Non Support, Pedestrian Civil Infraction, Rubbish Disposal Infraction, Small Claims, State Building/Fire Code Infraction, State Park/Forest/Rec Area Civil Infraction, Summary Process, Supplementary Process.

2B. What access would be available in a clerk's office public terminal/kiosk under the proposed rules.

- Rule 2(f), Computer Kiosk. "All publicly available electronic docket information shall be viewable at a computer kiosk or terminal located in the courthouse. There shall be no fee to access the kiosk. The Clerk may set reasonable limits on the time and volume of kiosk access to protect the Clerk's office from undue disruption and to promote access to the kiosk for all users."
- Criminal Cases. Rule 5(a)(2), Notes. "Each court should provide in the Clerk's office a kiosk for the public to use to view court records of criminal cases that are not otherwise prohibited from public disclosure. Searches of court records on the court kiosk will not be limited to case number." . . . "Public access to criminal records and proceedings in the courthouse shall not be affected or limited by this [remote access] rule."
- No access to PDFs from kiosk yet.

3A. What access to court records is available only by paper file from the clerk now.

- All publicly available civil and criminal cases.
- View/inspection.
- Paper copies and printouts.
- Postage mailing of copy or in person pick up.
- Scanning and imaging inconsistent.

3B. What access to court records is available only by paper file from the clerk under the proposed rules.

- Rule 2, Access to Court Records in a Courthouse. All public cases, civil and criminal.
- Rules 2(a), 2(b), and 2(c). Any member of the public may submit to the Clerk at a courthouse a request to access a court record. A Department may require a written form. Reason for request shall not be required. Request forms need not be retained; if retained, shall not be kept in the case file. The Clerk may set reasonable limits on the time, location, volume, and manner of access to protect the integrity of the court record and to protect the Clerk's office from undue disruption.
- Rule 2(d), Production.

"(1) The Clerk is responsible for providing access to all publicly available court records. The Clerk shall first determine whether the requested court record, or any portion thereof, is prohibited from public disclosure. The Clerk shall provide the record in the form requested by the public if practicable. The Clerk shall respond promptly upon receipt of a request for access to a court record.

"(2) If the court record is stored outside the courthouse, is under review by a judge, or is otherwise not readily accessible by the Clerk, the Clerk will procure the court record or a duplicate in a reasonably timely manner and notify the requester when the court record may be accessed." Notes, "To further the policy of general public access, the Clerk should accede to the requester's choice of format unless doing so imposes a significant, unrecoverable cost or other burden on the Clerk or the court. For example, when requested, the Clerk should provide a copy as a PDF instead of as paper."

- Copies and printouts available for a fee.

- **Scanning or cell phone imaging, Rule 2(j).** "The Clerk may allow a member of the public to use a personal handheld electronic imaging device (e.g., personal scanner, or, if permitted at the court location, a camera on a cell phone) to produce a copy of a court record. A fee shall not be charged for such reproduction."
- **PDFs.** Rule 2(h)(5), "If the court maintains a court record in electronic form (e.g., portable document format ["PDF"]), the Clerk may provide an electronic copy of the document upon request." Rule 2(d), Notes, "To further the policy of general public access, the Clerk should accede to the requester's choice of format unless doing so imposes a significant, unrecoverable cost or other burden on the Clerk or the court. For example, when requested, the Clerk should provide a copy as a PDF instead of as paper."
- **Email.** Rule 2(h)(6), "If technologically feasible, the Clerk may provide a court record on a CD or DVD or other media, and may transmit the reproduction electronically."
- **Exhibits, Rule 2(e), Notes.** "Documentary exhibits submitted to, and accepted by, a court in the course of adjudicatory proceedings are documents which the public shall be allowed to access and duplicate, unless the exhibits are contraband or are otherwise prohibited from public disclosure. In addition, a Clerk may withhold access to documentary exhibits if access poses a threat of deterioration or destruction of those exhibits."
- **Uniform Fee Schedule.** Committee recommends review of the fee schedule on whether to include PDFs and the amount of the \$1.00 per page copy fee.